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Regulatory
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Proposed Regulation Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	Article 50 (9 VAC 5-40-7240 et seq.) of Part II of 9 VAC 5 Chapter 40
Secondary action(s)	Part I (9 VAC 5-20-21) of 9 VAC 5 Chapter 20
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Consumer Products (Rev. G03)
Document preparation date	Enter date this form is uploaded on the Town Hall

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

This action will add a new rule (Article 50) to Chapter 40 of Regulations for the Control and Abatement of Air Pollution. The regulation will apply only to sources in the Northern Virginia volatile organic compounds emissions control area designated in 9 VAC 5-20-206. The regulation will limit VOC emissions from consumer products such as adhesives, adhesive removers, aerosol products (like cooking and dusting sprays), air freshener, antiperspirants and deodorants, facial toners and astringents, waxes and polishes (for cars, floors, etc.), tile cleaners, tar removers, bug sprays, rug cleaners, charcoal lighter fluid, disinfectants, cosmetics, soaps.

Legal Basis

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation proposed. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Purpose

Please provide a statement explaining the rationale or justification of the proposed regulation as it relates to the health, safety or welfare of citizens.

The purpose of the regulation is to require owners to limit emissions of air pollution from consumer products to the level necessary for (i) the protection of public health and welfare, and (ii) the attainment and maintenance of the air quality standards. The proposed amendments are being made to help provide emissions reductions sufficient to achieve the ozone standard in Northern Virginia.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The proposed regulatory action will add a new rule, Emission Standards for Consumer Products in the Northern Virginia Volatile Organic Compound Emissions Control Area (Rule 4-50). The provisions of this rule apply to those persons who sell, supply, offer for sale, or manufacture for sale any consumer product that contains volatile organic compounds. Exempted from the regulation is any consumer product manufactured in the Northern Virginia volatile organic compound emissions control area for shipment and use outside of this area. The provisions of this regulation shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale a consumer product that does not comply with the VOC standards as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the Northern Virginia volatile organic compound emissions control area, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to the Northern Virginia volatile organic compound emissions control area. A number of product-specific exemptions are also allowed. The rule specifies a compliance deadline of January 1, 2005.

Issues

Please identify the issues associated with the proposed regulatory action, including: (1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; (2) the primary advantages and disadvantages to the agency or the Commonwealth; and (3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1. Public: The primary advantage to the public is that the adoption of these regulations will significantly decrease emissions of VOCs in the Northern Virginia area, thus benefiting public health and welfare. There are no disadvantages to the public.
2. Department: The primary advantages to the department are that the adoption of these regulations will allow Virginia (1) to avoid federal sanctions that would be imposed for violating the SIP provisions of the Clean Air Act, and (2) to uphold its promise to its jurisdictional neighbors (Maryland and Washington, D.C.). There are no disadvantages to the department.

Localities Particularly Affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

The localities particularly affected by the proposed regulations are the counties of Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

Public Participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Department is seeking comments on the costs and benefits of the proposal and on any impacts of the regulation on farm and forest land preservation.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing (see below) or by mail, email or facsimile transmission to Robert Mann, Director, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240 (email: ramann@deq.state.va.us) (fax number 804-698-4510). Written comments must include the name and address of the commenter. Comments by facsimile transmission will be accepted only if followed by receipt of the original within one week. Comments by email will be accepted only if the name and address of the commenter are included. All testimony, exhibits and documents received are matters of public record. In order to be considered comments must be received by 5:00 p.m. on the date established as the close of the comment period.

A public hearing will be held and the notice of the public hearing, along with the comment period closing date, can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Financial Impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the information specified below. Also include a description of the beneficial impact the regulation is designed to produce.

<p>a. Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The Virginia entities likely to be affected by this rulemaking are the manufacturers who may produce consumer products that may be sold in Northern Virginia.</p>
<p>b. Agency’s best estimate of the number of such entities that will be affected</p>	<p>The number of entities likely to be affected by this rulemaking is 193. (Data from CEDS database analysis Oct. 30, 2002.)</p>
<p>c. Projected cost of the regulation for affected individuals, businesses, or other entities</p>	<p>California has estimated the cost of its consumer products rule to be \$800 per ton. Since the Ozone Transport Commission’s model rule emission limits are based on California’s, this value should represent the approximate costs that would be incurred to meet the same limits in OTC states, including Virginia. However, because compliance costs are spread over a larger portion of sales in the OTC than in California, costs incurred by manufacturers are expected to be lower than \$800 per ton. (Data from “Control Measure Development Support Analysis of Ozone Transport Commission Model Rules,” E. H. Pechan and Associates, March 31, 2001, page 8.)</p>
<p>d. Information on the impact on small businesses as defined in § 2.2-2279</p>	<p>The impact upon facilities that meet the definition of small business provided in § 2.2-2279 of the Code of Virginia is addressed in item c above.</p>
<p>e. Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>It is not expected that the regulation will result in any cost to the Department beyond that currently in the budget. The sources of Department funds to carry out this regulation are the general fund and the federal trust (grant money provided by the U.S. Environmental Protection Agency under Section 105 of the federal Clean Air Act or permit fees charged to affected entities under the permit program). The activities are budgeted under the following program (code)/subprogram (code): Environmental and Resource Management (5120000)/Air Quality Stationary Source Compliance Inspections (5122100). The costs are expected to be ongoing.</p>
<p>f. Projected cost of the regulation on localities</p>	<p>The projected cost of the regulation on localities is not expected to be beyond that of other affected entities and are addressed in item c above.</p>
<p>g. Beneficial impact the regulation is designed to produce</p>	<p>The adoption of this regulation will decrease emissions of VOCs in the Northern Virginia area by an estimated 3 tons per day. This significant emissions reduction will benefit public health and</p>

	welfare. It will also allow Virginia to avoid federal sanctions that would be imposed for violating the SIP provisions of the Clean Air Act and to uphold its promise to its jurisdictional neighbors (Maryland and Washington, D.C.) to take this action.
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Legal Requirements

Please identify the state and/or federal source of the legal requirements that necessitate promulgation of the proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal requirements and the extent to which the requirements are mandatory or discretionary.

Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

Federal Requirements

Sections 109 (a) and (b) of the Clean Air Act require EPA to prescribe primary and secondary air quality standards to protect public health and welfare, respectively, for each air pollutant for which air quality criteria were issued before the enactment of the 1970 Clean Air Act. These standards are known as the National Ambient Air Quality Standards (NAAQS). Section 109 (c) requires EPA to prescribe such standards simultaneously with the issuance of new air quality criteria for any additional air pollutant. The primary and secondary air quality criteria are authorized for promulgation under Section 108.

Section 110(a) of the Clean Air Act (CAA) mandates that each state adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

- (1) establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the CAA, including economic incentives such as fees, marketable permits, and auctions of emissions rights;
- (2) establish schedules for compliance;
- (3) prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state; and
- (4) require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

40 CFR Part 50 specifies the NAAQS: sulfur dioxide, particulate matter, carbon monoxide, ozone (and its precursors, volatile organic compounds) nitrogen dioxide, and lead.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the description of emissions reductions estimates sufficient to attain and maintain the standards, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart K (Source Surveillance) specifies procedures for emissions reports and record-keeping, procedures for testing, inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans.

Section 51.230 under Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

- (1) adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;
- (2) enforce applicable laws, regulations, and standards, and seek injunctive relief;
- (3) abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;
- (4) prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;
- (5) obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require record-keeping and to make inspections and conduct tests of air pollution sources;
- (6) require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and
- (7) make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority as follows:

- (1) the provisions of law or regulation which the state determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and
- (2) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

Subpart N (Compliance Schedules) specifies legally enforceable compliance schedules, final compliance schedule dates, and conditions for extensions beyond one year.

Part D of Title I of the Clean Air Act describes how nonattainment areas are established, classified, and required to meet attainment. Subpart 1 provides the overall framework of what nonattainment plans are to contain, while Subpart 2 provides more detail on what is required of areas designated nonattainment for ozone.

Section 171 defines "reasonable further progress," "nonattainment area," "lowest achievable emission rate," and "modification."

Section 172(a) authorizes EPA to classify nonattainment areas for the purpose of assigning attainment dates. Section 172(b) authorizes EPA to establish schedules for the submission of plans designed to achieve attainment by the specified dates. Section 172(c) specifies the provisions to be included in each attainment plan, as follows:

(1) the implementation of all reasonably available control measures as expeditiously as practicable and shall provide for the attainment of the national ambient air quality standards;

(2) the requirement of reasonable further progress;

(3) a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutants in the nonattainment area;

(4) an identification and quantification of allowable emissions from the construction and modification of new and modified major stationary sources in the nonattainment area;

(5) the requirement for permits for the construction and operations of new and modified major stationary sources in the nonattainment area;

(6) the inclusion of enforceable emission limitations and such other control measures (including economic incentives such as fees, marketable permits, and auctions of emission rights) as well as schedules for compliance;

(7) if applicable, the proposal of equivalent modeling, emission inventory, or planning procedures; and

(8) the inclusion of specific contingency measures to be undertaken if the nonattainment area fails to make reasonable further progress or to attain the national ambient air quality standards by the attainment date.

Section 172(d) requires that attainment plans be revised if EPA finds inadequacies. Section 172(e) authorizes the issuance of requirements for nonattainment areas in the event of a relaxation of any national ambient air quality standard. Such requirements shall provide for controls which are not less stringent than the controls applicable to these same areas before such relaxation.

Under Part D, Subpart 2, §182(a)(2)(A) requires that the existing regulatory program requiring reasonably available control technology (RACT) for stationary sources of volatile organic compounds (VOCs) in marginal nonattainment areas be corrected by May 15, 1991, to meet the minimum requirements in existence prior to the enactment of the 1990 amendments. RACT is the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. EPA has published control technology guidelines (CTGs) for various types of sources, thereby defining the minimum acceptable control measure or RACT for a particular source type.

Section 182(b) requires stationary sources in moderate nonattainment areas to comply with the requirements for sources in marginal nonattainment areas. The additional, more comprehensive control measures in §182(b)(2)(A) require that each category of VOC sources employ RACT if the source is covered by a CTG document issued between enactment of the 1990 amendments and the attainment date for the nonattainment area. Section 182(b)(2)(B) requires that existing stationary sources emitting VOCs for which a CTG existed prior to adoption of the 1990 amendments also employ RACT.

Section 182(c) requires stationary sources in serious nonattainment areas to comply with the requirements for sources in both marginal and moderate nonattainment areas.

EPA has issued detailed guidance that sets out its preliminary views on the implementation of the air quality planning requirements applicable to nonattainment areas. This guidance is titled the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (or "General Preamble"). See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The General Preamble has been supplemented with further guidance on Title I requirements. See 57 FR 31477 (July 16, 1992) (announcing the availability of draft guidance for lead nonattainment areas and serious PM10 nonattainment areas); 57 FR 55621 (Nov. 25, 1992) (guidance on NOX RACT requirements in ozone nonattainment areas). For this subject, the guidance provides little more than a summary and reiteration of the provisions of the Act.

State Requirements

These specific regulations are not required by state mandate. Rather, Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth" (§ 10.1-1308). The law defines such air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people or life or property" (§ 10.1-1300).

Comparison with Federal Requirements

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The proposed regulation amendments are not more restrictive than the applicable legal requirements.

Need

Please explain the need for the new or amended regulation and the potential consequences that may result in the absence of the regulation. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Identification of Specific Plan Requirement Establishing the Need

The rule is to make legally enforceable one of several control measures identified in and designed to implement a plan submitted by the Commonwealth on August 19, 2003 for the attainment and maintenance of the ozone air quality standard in the Northern Virginia area. The plan was approved by the Metropolitan Washington Air Quality Committee (MWAQC) on August 13, 2003 and is entitled: State Implementation Plan (SIP) Demonstrating Rate of Progress for 2002 and 2005; Revision to 1990 Base Year Emissions; and Severe Area Attainment Demonstration for the Washington DC-MD-VA Nonattainment Area. MWAQC is the entity certified by the mayor of the District of Columbia and the governors of Maryland and Virginia to prepare an air quality plan for the DC-MD-VA Metropolitan Statistical Area under Section 174 of the federal Clean Air Act Amendments of 1990. The plan may be viewed at the following location:

<http://www.mwcog.org/environment/air/>

General Plan Requirements

Among the primary goals of the federal Clean Air Act are the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

The NAAQS, developed and promulgated by the U.S. Environmental Protection Agency (EPA), establish the maximum limits of pollutants that are permitted in the outside ambient air. EPA requires that each state submit a plan (called a State Implementation Plan or SIP), including any laws and regulations necessary to enforce the plan, that shows how the air pollution concentrations will be reduced to levels at or below these standards (attainment). Once the pollution levels are within the standards, the SIP must also demonstrate how the state will maintain the air pollution concentrations at the reduced levels (maintenance).

A SIP is the key to the state's air quality programs. The Clean Air Act is specific concerning the elements required for an acceptable SIP. If a state does not prepare such a plan, or EPA does not approve a submitted plan, then EPA itself is empowered to take the necessary actions to attain and maintain the air quality standards—that is, it would have to promulgate and implement an air quality plan for that state. EPA is also, by law, required to impose sanctions in cases where there is no approved plan or the plan is not being implemented, the sanctions consisting of loss of federal funds for highways and other projects and/or more restrictive requirements for new industry. Generally, the plan is revised, as needed, based upon changes in the federal Clean Air Act and its requirements.

The basic approach to developing a SIP is to examine air quality across the state, delineate areas where air quality needs improvement, determine the degree of improvement necessary, inventory the sources contributing to the problem, develop a control strategy to reduce emissions from contributing sources enough to bring about attainment of the air quality standards, implement the strategy, and take the steps necessary to ensure that the air quality standards are not violated in the future.

The heart of the SIP is the control strategy. The control strategy describes the emission reduction measures to be used by the state to attain and maintain the air quality standards. There are three basic types of measures: stationary source control measures, mobile source control measures, and transportation source control measures. Stationary source control measures are directed at limiting emissions primarily from commercial/industrial facilities and operations and include the following: emission limits, control technology requirements, preconstruction permit programs for new industry and expansions, and source-specific control requirements. Stationary source control measures also include area source control measures which are directed at small businesses and consumer activities. Mobile source control measures are directed at tailpipe and other emissions primarily from motor vehicles and include the following: Federal Motor Vehicle Emission Standards, fuel volatility limits, reformulated gasoline, emissions control system anti-tampering programs, and inspection and maintenance programs. Transportation source control measures limit the location and use of motor vehicles and include the following: carpools, special bus lanes, rapid transit systems, commuter park and ride lots, bicycle lanes, signal system improvements, and many others.

Federal guidance on states' approaches to the inclusion of control measures in the SIP has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. Many regulatory requirements were adopted in the 1970s when no detailed guidance existed. The legally binding federal mandate for these regulations is general, not specific, consisting of the Clean Air Act's broad-based directive to states to attain and maintain the air quality standards. However, in recent years, the Clean Air Act, along with EPA regulations and policy, has become much more specific, thereby removing much of the states' discretion to craft their own air quality control programs.

Generally, a SIP is revised, as needed, based upon changes in air quality or statutory requirements. For the most part the SIP has worked, and the standards have been attained for most pollutants in most areas. However, attainment of NAAQS for one pollutant--ozone--has proven problematic. While ozone is needed at the earth's outer atmospheric layer to shield out harmful rays from the sun, excess concentrations at the surface have an adverse effect on human health and welfare. Ozone is formed by a chemical reaction between volatile organic compounds (VOCs), nitrogen oxides (NOX), and sunlight. When VOC and NOX emissions from mobile sources and stationary sources are reduced, ozone is reduced.

Congress enacted the 1977 Amendments to the Clean Air Act in order to address unsuccessful SIPs and areas that had not attained the NAAQS (that is, nonattainment areas). Although SIP revisions submitted pursuant to the requirements of the 1977 amendments did achieve some progress in eliminating nonattainment areas, some areas remained.

In 1990 Congress once again enacted comprehensive amendments to the Act to address SIP requirements for nonattainment areas. The new Act established a process for evaluating the air quality in each region and identifying and classifying each nonattainment area according to the severity of its air pollution problem. Nonattainment areas are classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification (or class) is subject to successively more stringent control measures. Areas in a higher classification of nonattainment must meet the mandates of the lower classifications plus the more stringent requirements of their class. In addition to the general SIP-related sanctions, nonattainment areas have their own unique sanctions. If a particular area fails to attain the federal standard by the legislatively mandated attainment date, EPA is required to reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent air pollution control requirements. The Clean Air Act includes specific provisions requiring these sanctions to be issued by EPA if so warranted.

The new Act required EPA, based on the air quality data from each state, to propose geographic boundaries and pollution classification levels for all nonattainment areas to each state's governor. If states disagreed with EPA's proposals, they had the opportunity to propose different boundaries; however, EPA had the authority to make the final decision.

The process provided in the new Act yielded three nonattainment areas for Virginia. The classifications for Virginia's nonattainment areas were marginal for the Hampton Roads Nonattainment Area, moderate for the Richmond Nonattainment Area, and serious for the Northern Virginia Nonattainment Area. Since that time, air quality has improved. Although Northern Virginia remains a nonattainment area, Richmond and Hampton Roads have achieved the one-hour ozone standard and are now considered maintenance areas: that is, specific strategies that were implemented must continue; however, no additional new requirements are necessary provided the areas do not measure ozone concentrations in levels high enough to reclassify them into nonattainment.

Once the nonattainment areas were defined, each state was then obligated to submit a SIP demonstrating how it would attain the air quality standards in each nonattainment area. First, the new Act requires that certain specific control measures and other requirements be adopted and included in the SIP; a list of those that necessitated the adoption of state regulations is provided below. In addition, the state had to demonstrate that it would achieve a VOC emission reduction of 15%. Finally, the SIP had to include an attainment demonstration by photochemical modeling (including annual emission reductions of 3% from 1996 to 1999) in addition to the 15% emission reduction demonstration. In cases where the specific control measures shown below were inadequate to achieve the emission reductions or attain the air quality standard, the state was obligated to adopt other control measures as necessary to achieve this end.

ALL AREAS

- correct existing VOC regulatory program (controls on certain sources identified in EPA control technology guidelines)
- requirement for annual statements of emissions from industries
- preconstruction review (permit) program for new industry and expansions (with variable major source definition, variable offset ratio for addition of new pollution, and special requirements for expansions to existing industry in serious areas)
- offset ratio for addition of new pollution of 1.1 to 1
- procedures to determine if systems level highway plans and other federally financed projects are in conformity with air quality plans

MODERATE AND ABOVE AREAS

- requirement for controls for all major (100 tons per year) VOC sources
- requirement for controls for all major (100 tons per year) NOX sources
- case by case control technology determinations for all major VOC and NOX sources not covered by a EPA control technology guideline
- offset ratio for addition of new pollution of 1.15 to 1
- requirement for vapor recovery controls for emissions from filling vehicles with gasoline (stage II)

SERIOUS AND ABOVE AREAS

- requirement for controls for all major (50 tons per year) VOC sources
- requirement for controls for all major (50 tons per year) NOX sources
- offset ratio for addition of new pollution of 1.2 to 1
- enhanced monitoring (source emissions) program
- correct existing motor vehicle emissions inspection and maintenance (I&M) program
- enhanced motor vehicle emissions I&M program
- clean fuel fleet vehicle program
- oxygenated fuels program

SEVERE AND ABOVE AREAS

- requirement for controls for all major (25 tons per year) VOC sources
- requirement for controls for all major (25 tons per year) NOX sources
- offset ratio for addition of new pollution of 1.3 to 1

- requirement for major sources to pay a penalty fee if area does not attain air quality standard by attainment date
- transportation control strategies and measures to offset emissions growth from VMT

The Clean Air Act mandates that states include in their SIPs certain control measures. Virginia has submitted for federal approval a plan for the Northern Virginia area (formerly classified Serious, now classified Severe) that meets all the requirements for the Serious areas. These federally mandated measures, however, will not fill the gap between air quality goals and actual air quality, so the SIP must now incorporate additional measures as needed to meet the air quality goals. These additional measures have been determined in consultation with locally affected officials, who provide input on control strategy development and associated control measures.

In the Northern Virginia area, the pertinent body of locally affected officials is the Metropolitan Washington Air Quality Committee (MWAQC). MWAQC is the entity certified by the mayor of the District of Columbia and the governors of Maryland and Virginia to prepare an air quality plan for the DC-MD-VA Metropolitan Statistical Area under Section 174 of the federal Clean Air Act Amendments of 1990. Based on the region's current and projected future emissions and other regional data, MWAQC determined that the attached regulations are necessary for the area to meet its emissions reductions and attainment requirements. MWAQC therefore decided on January 23, 2002, that Maryland, Virginia, and Washington, D.C., would adopt the regulations.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

As provided in the public participation procedures of the State Air Pollution Control Board, the Department included, in the Notice of Intended Regulatory Action, a description of the Department's alternatives and a request for comments on other alternatives and the costs and benefits of the Department's alternatives or any other alternatives that the commenters provided.

Following the above, alternatives to the proposed regulation amendments were considered by the Department. The Department determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation. The alternatives considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives being considered, are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option was chosen because it meets the stated purpose of the regulation and it is the least burdensome way to meet the stated purpose of the regulation.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option was not chosen because other means of meeting the stated purpose of the regulation would be more burdensome and more intrusive than the first alternative.
3. Take no action to amend the regulations. This option was not chosen because Virginia must take action to reduce its VOC emissions in order to meet its obligations under the Clean Air Act.

Public Comment

Please summarize all public comment received during 30-day period following the publication of the NOIRA, and provide the agency response. If no public comment was received, please so indicate.

Commenter	Comment	Agency response
<p>Navy Region Mid-Atlantic, Regional Environmental Coordinator's Office, Norfolk, Virginia</p>	<p>The Ozone Transport Commission Model Rule for consumer products is an excellent basis for any DEQ rule regulating consumer products.</p>	<p>Support for the proposal is appreciated.</p>
<p>County of Fairfax Board of Supervisors, Fairfax, Virginia</p>	<p>On May 23, 2003, a draft Severe Area State Implementation Plan (SIP) for the Washington region nonattainment area was developed and released for public comment by the Metropolitan Washington Air Quality Committee (MWAQC). Three members of the Fairfax County Board of Supervisors, of which I am the Chairman, serve on the MWAQC Board. The Fairfax County Board of Supervisors believes that the proposed amendments are consistent with and support the requirements of the SIP, and will have a positive effect on air quality in our region. Therefore we support the proposed amendments to the regulations regarding consumer products (9 VAC 5 Chapter 40).</p> <p>Reducing air pollution is a top priority for Fairfax County and the other Washington metropolitan jurisdictions that face federal deadlines for reducing emissions that produce ground-level ozone (smog). Smog not only threatens the health and well being of our citizens, but failure to adequately address this issue could result in an embargo of federal transportation funds for the region. This embargo would jeopardize the expansion of highway and mass transit systems and would adversely affect the economic well being of the Washington region. All of us in the region would feel the impacts of dirtier air, more congestion and declining economic conditions.</p>	<p>Support for the proposal is appreciated.</p>

Impact on Family

Please provide an assessment of the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: (1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; (2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; (3) strengthen or erode the marital commitment; and (4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

Detail of Changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Current requirement	Proposed change and rationale
20-21	Provides a list of documents incorporated by reference into 9 VAC 5-10 through 9 VAC 5-80.	Adds new documents generated by Article 50 of 9 VAC 5-40. Change is necessary in order to meet Virginia statutory requirements to make the documents legally enforceable.

New section number	New requirement	Rationale for new requirement
40-7240	Specifies that the provisions of the rule apply to those who sell, supply, offer for sale, or manufacture for sale any consumer product that contains volatile organic compounds. It also specifies that the provisions of the rule apply throughout the Northern Virginia volatile organic compound emissions control area designated in 9 VAC 5-20-206.	Necessary to identify the regulated entities that are subject to the rule. Regulated entities are consistent with plan submitted by the Commonwealth on August 19, 2003 for the attainment and maintenance of the ozone air quality standard in the Northern Virginia area.
40-7250	Specifies exemptions from the rule.	Necessary in order to exclude emission reductions from regulated entities not needed to achieve emission reduction goals.
40-7260	Specifies definitions of terms used	Necessary to support the other provisions of the

	within the rule.	rule.
40-7270	Establish emission limits of volatile organic compounds which are precursors to the formation of ozone.	Necessary to achieve emission reductions specified in the August 19, 2003 plan submittal.
40-7280	Specifies provisions for alternative control plans.	Necessary to provide operational flexibility.
40-7290	Specifies provisions addressing innovative products.	Necessary to provide incentives to the regulated entity to develop innovative products.
40-7300	Specifies administrative requirements.	Necessary to ensure uniform labeling and other requirements to allow spot monitoring of compliance with the rule.
40-7310	Cross-references the standard for toxic pollutants.	Necessary to identify existing general requirements applicable to all entities regulated under 9 VAC 5-40. Necessary to ensure that there are no collateral emissions of toxic pollutants.
40-7320	Cross-references provisions for compliance.	Necessary to identify existing general requirements applicable to all entities regulated under 9 VAC 5-40.
40-7330	Specifies a compliance deadline of January 1, 2005.	Necessary to achieve compliance by the date specified in the August 19, 2003 plan submittal.
40-7340	Specifies test methods and procedures.	Necessary to identify existing general requirements applicable to all entities regulated under 9 VAC 5-40. Necessary to ensure that the same test methods are used by all regulated entities.
40-7350	Cross-references provisions for monitoring.	Necessary to identify existing general requirements applicable to all entities regulated under 9 VAC 5-40.
40-7360	Specifies provisions for notification, records and reporting.	Necessary to identify existing general requirements applicable to all entities regulated under 9 VAC 5-40. Necessary to specify unique reporting requirements that provide for on going monitoring of compliance with the rule

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than four years after the proposed regulation is expected to be effective.

The Department will initiate a review and re-evaluation of the regulation to determine if it should be continued, amended, or terminated within four years after its effective date.

The specific and measurable goals the proposed regulation amendments are intended to achieve are as follows:

1. To protect public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

2. To ensure that owners comply with air pollution emission limits and control technology requirements in order to control levels of volatile organic compound emissions being emitted into the ambient air.
3. To prohibit emissions which would contribute to nonattainment of the national air quality standards or interference with maintenance of the standards.

Clarity

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Department, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

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